

M E M O R A N D U M

To: Tom Harmer, Town Manager

From: Allen Parsons, AICP
Director, Planning, Zoning & Building Department

Report date: December 10, 2021

Meeting date: January 10, 2022

Subject: Ordinance 2021-15, Amending Chapter 160, and the Town's Comprehensive Plan for Addition of a Property Rights Element

Recommended Action

Adopt Ordinance 2021-15.

Background

At their November 1, 2021 Regular Meeting the Town Commission held first reading and transmitted Ordinance 2021-15 to the Department of Economic Opportunity (DEO) for review and comment with a recommendation to schedule second reading, public hearing and adoption following DEO review.

The DEO, along with other State and regional agencies, reviewed the Comprehensive Plan amendment, which adds a statutorily required Property Rights Element to the Comprehensive Plan. Following DEO and agency review comments (they had no comments), Comprehensive Plan amendments are required to be adopted within 180 days of receiving DEO's comments (received on December 8, 2021). This second public hearing is considered the "adoption" public hearing. After adoption, the ordinance/amendment will become effective 31 days after the DEO notifies the Town that the amendment package is complete or, if challenged, until it is found to be in compliance by the DEO or Administration Commission.

As discussed at the first public hearing, House Bill 59¹, from this year's Legislative Session, requires all local governments to include a "Property Rights Element" in their Comprehensive Plan. The legislature approved this Bill to ensure that Local Governments respect judicially acknowledged and constitutionally protected private property rights, and to ensure that private property rights are protected and considered in the Town's decision-making processes.

The timing requirement for adoption of this new Plan Element is written in the Statute such that it is required "by the earlier of the local government's adoption of its next proposed plan amendment initiated after a certain date or the next scheduled evaluation and appraisal of its comprehensive plan."

¹The bill was approved by the Governor on June 29, 2021, Ch. 2021-195, L.O.F., and became effective on July 1, 2021 (see Attachment B).

What this means is that the Town cannot adopt or transmit to the DEO any amendments to its Comprehensive Plan until the Town has adopted this newly required Property Rights Element (the “certain date” language in the Statute refers to July 1, 2021, when the Statute became effective).

Because the Town had received an application for a Conformance Overlay Redevelopment District (CORD) redevelopment at 551 Broadway Street that would have involved amending the Comprehensive Plan’s Future Land Use Map (FLUM), if approved, the Town would have had to have adopted this new Property Rights Element adopted prior to the FLUM amendment, which had a public hearing at the November 1, 2021 Town Commission Regular Meeting. (Note: The CORD redevelopment application was denied at the Town Commission’s November 15, 2021 Special Meeting.)

As noted previously, the DEO had indicated that any new proposed amendment packages initiated after July 1, 2021, would be returned unless the local government’s Comprehensive Plan includes a Property Rights Element.

The statutory Property Rights Element requirements are very straightforward. The Bill provides a model statement of rights a local government may adopt. However, the Bill allows a local government to develop its own property rights language if such language does not conflict with the model statement of rights, which requires local governments to consider the property owner’s right to:

- Physically possess the property and control his or her interests in the property, including easements, leases, or mineral rights;
- Use, maintain, develop, and improve the property for personal use or the use of another, subject to State law and local ordinances;
- Privacy and exclusion of others from the property to protect his or her possessions and property; and
- Dispose of the property through sale or gift.

Ordinance 2021-15 incorporates the required model statement of rights and additionally includes objectives and policies that emphasize the Town’s commitment to processes, procedures, and standards intended to provide open, transparent strategies for implementing land use rules and regulations in a way that benefits people and respects property rights.

The Planning & Zoning Board held a public hearing on September 21, 2021, recommended approval of Ordinance 2021-15, and forwarded to the November 1, 2021 Regular Meeting for Commission consideration and first reading.

Staff Recommendation

Adopt Ordinance 2021-15.

Attachments

- A. Ordinance 2021-15 (Available in Town Clerk’s Office)
- B. DEO and Review Agency Comments (Available in Town Clerk’s Office)
- C. PowerPoint Presentation (Available in Town Clerk’s Office)

End of Agenda Item